

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
SAMUEL DERIKRAVA }

For Appellant: Samuel Derlkrava, in pro. **per.**

For Reepondsnt: Crawford H. **Thomas**
Chief Counsel

Robert **S.** Shelburne
C o u n s e l

O P I N I O N

This appeal is made pursuant to section **19059** of the Revenue and Taxation Code from the action of the Franchlae Tax Board in denying the **claims** of Samuel Derikrava for refund of personal Income tax In the **amounts** of **\$34.72, \$39.55 and \$18.17** for the **years 1960, 1961 and 1962, respectively.**

Appellant **is** a merchant seaman and during the years **1961, 1962, and 1963** he spent four months, two months, and three months, respectively, In **California.** During the balance of the above years he was at **sea** or In the State of Washington. Mr. Derlkrava filed California resident personal Income tax returns, and **paid** the tax llabliltles, for each of the **years 1960 through 1963.**

On November **24, 1964,** appellant filed a claim **for** refund specifically applicable to **1963** only. Mr. **Derikrava** stated that the reason for the **claim** was that an agent of the Franchise Tax Board had Informed **him** that he had **paid** too much tax. In the absence of additional Information, respondent disallowed the claim. **In** October of **1967** appellant filed **claims** for refund for each of the years **1960 through 1963. Since** appellant did not state any

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reasons for the claims, the Franchise Tax Board requested additional information. Mr. Derikrava replied that he was a nonresident of California during the period covered by the claims, and he submitted the previously discussed Information relating to the time which he had spent in this state. The Franchise Tax Board states that according to its records the above claims for refund are the only claims that board has received from appellant.

In respect to the claims for refund filed in October of 1967, respondent allowed the claim for 1963, but determined that those for the years in question were barred by section 19053 of the Revenue and Taxation Code. Whether this determination was correct is the sole issue presented by this appeal.

Section 19053 provides:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, or unless before the expiration of such period the Franchise Tax Board allows a credit, makes a refund or certifies such overpayment to the State Board of Control for approval of the refunding or the crediting thereof..

The taxpayer has the burden of proving the timely filing of claims for refund. (Appeal of Clarence L. and A. Lola Morey, Cal. St. Bd. of Equal., Aug. 3, 1965; Cal. Admin. Code, tit. 18, § 5036.) With respect to the years in question, the claim filed on November 24, 1964, was not applicable, and the claims submitted in October of 1967 were not filed pursuant to the requirements of section 19053. Appellant now contends that he did file timely claims for these years. However, he has not offered any evidence in support of this contention. We have no alternative but to conclude that appellant has failed to carry his burden of proof, and therefore the determination of the Franchise Tax Board must be upheld. (Appeal of Dwain G. and Mary M. Rice, Cal. St. Bd. of Equal., Aug. 7, 1967.)

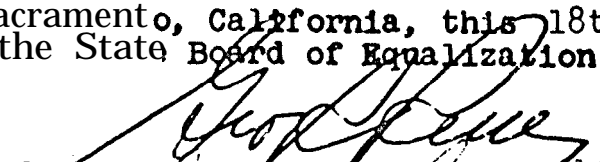
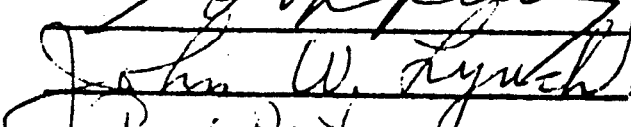
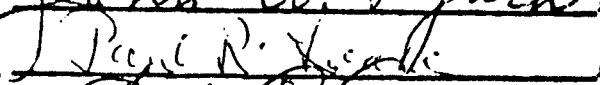


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OR DER

Pursuant to the ~~views~~ expressed in the opinion of the board on file In ~~this~~ proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board In denying the ~~claims~~ of Samuel Derikrava for refund of personal Income tax In the amounts of \$34.72, \$39.55 and \$18.17 for the years 1960, 1961 and 1962, respectively, be and the ~~same~~ la hereby ~~sustained~~.

Done at Sacramento, California, this 18th day of February, 1970, by the State Board of Equalization.


Chairman

M e m b e r

Member

Member

Member

Attest:

 , Secretary,